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No. 109, Original

Supreme Court of the United States

October Term, 1990

STATE OF OKLAHOMA AND
STATE OF TEXAS,
Plaintiffs,

v.

STATE OF NEW MEXICO,
Defendant.

EXCEPTION OF THE STATE OF OKLAHOMA TO REPORT OF THE SPECIAL MASTER AND BRIEF IN SUPPORT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

EXCEPTION OF THE STATE OF OKLAHOMA TO REPORT OF THE SPECIAL MASTER 1

JURISDICTION 3

STATUTE INVOLVED 3

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 5

ARGUMENT:

The Compact's Article IV (b) Limitation On "Conservation Storage" In New Mexico Should Be Interpreted To Apply To The Physical Capacity Of Reservoirs, Not Water In Storage 6

CONCLUSION 15

APPENDIX A (Canadian River Compact) 17

TABLE OF AUTHORITIES

Cases: **Page**

West Virginia ex rel Dyer v. Sims, 341 U.S. 22 (1951) 9

Arizona v. California, 292 U.S. 341 (1934) 9

Texas v. New Mexico, 462 U.S. 554 (1983) 9

Constitution and Statutes:

U.S. Const. Art. III, §2, cl. 2 3

28 U.S.C. §125 (a)(1) 3

Canadian River Compact, 66 Stat. 71 . . . . . *passim*

Other Materials:

P. Ex. 38, Ex. F. Attachment, p. 2

P. Ex. 38, p. 3

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EXCEPTION OF THE STATE OF OKLAHOMA TO REPORT OF THE SPECIAL MASTER

The Court ordered the October 15, 1990, Report of the Special Master filed on November 5, 1990. In this exception and supporting brief, the report will be referred to as the 1990 Report.

Oklahoma adopts by reference the exceptions of the co-Plaintiff, the State of Texas. Subject to those exceptions, Oklahoma accepts the 1990 Report, except for the one matter presented within this Exception to Report and Brief in Support.

Oklahoma objects to the 1990 Report determination that the Article IV (b) Canadian River Compact limitation on "conservation storage" in New Mexico should be interpreted to apply to water in storage, not the physical capacity of reservoirs.

Respectfully submitted,

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DECEMBER 20,1990

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BRIEF IN SUPPORT OF OKLAHOMA'S EXCEPTION

JURISDICTION

The original jurisdiction of the Court was invoked under Article III, Section 2, clause 2 of the Constitution of the United States, and Paragraph (a) (1), Section 1251, Title 28 of the United States Code.

STATUTE INVOLVED

Determination of the issues of this case is governed by the provisions of the Canadian River Compact ("Compact") 66 Stat. 74 (1952). Appendix A to this brief sets forth the Compact.

STATEMENT OF THE CASE

The Canadian River is an interstate river which rises in northeastern New Mexico, near Raton. From its headwaters, the Canadian River flows south, then generally from the west

to the east through New Mexico, Texas and Oklahoma. In Oklahoma, the Canadian River flows into the Arkansas River, a tributary of the Mississippi River.

By Act of April 29, 1950, Congress consented to the negotiation of a compact between New Mexico, Texas and Oklahoma for an equitable apportionment of the waters of the Canadian River. That Compact was ultimately negotiated between the signatory states, ratified by the states and approved by Congress pursuant to Act of May 17, 1952. 66 Stat. 74.

Article IV (b) of the Canadian River Compact provides that the amount of conservation storage in New Mexico available for impounding Canadian River waters below Conchas Dam shall be limited to an aggregate of 200,000 acre-feet.

Oklahoma and Texas initiated this litigation in April of 1987 when they filed their Complaint. The Complaint stated that New Mexico was violating the Compact by possessing and maintaining "conservation storage" for the waters of the Canadian River in New Mexico below Conchas Dam in excess of the amount allowed and the limitation imposed under Article IV (b) of the Compact. In answer, New Mexico denied the Compact violation.

The Court appointed Special Master Jerome C. Muys to conduct proceedings in this cause and make report and recommendation to the Court.

In proceedings before the Special Master, the parties prepared and submitted Joint Statement of Facts, Joint Statement of Agreed Facts, Joint Statement of Disputed Facts and Joint Statement of Legal Issues. Based on those filings, the parties prepared and simultaneously submitted to the Special Master Motions for Summary Judgment on legal issues. Based on those motions, replies, oral argument, agreed material facts and exhibits, the Special Master determined the legal issues presented and prepared and filed with the Court his Report on those issues and Recommended Decree.

The Recommended Decree finds and determines, among other findings, that New Mexico has been in violation of the limitation on conservation storage provided under Article IV (b) of the Compact since the Spring of 1987 (1990 Report, p. 114). That determination was based on a finding that New Mexico has since the Spring of 1987, stored, as conservation storage below Conchas Dam, a quantity of water in excess of 200,000 acre-feet. The Recommended Decree additionally provides that this dispute be referred back to the Special Master to determine any injury Oklahoma and Texas may have sustained as a result of the New Mexico Compact violation and to recommend appropriate relief. (1990 Report, p. 114).

In reaching the ultimate finding and conclusion of Compact violation by New Mexico, the 1990 Report addresses and determines various legal sub-issues. One of the sub-issues considered and determined is that contained in Section VI of the Report, pages 35-45. This sub-issue was whether the Article IV (b) limitation on conservation storage in New Mexico was a limitation on the physical capacity of reservoirs available for conservation storage or, instead, a limitation on the quantity of water in conservation storage. The Report recommends that Article IV (b) and the limitation it imposed be interpreted to restrict quantities of water in storage, not reservoir capacity for conservation storage.

Oklahoma takes exception to this proposal. If the Court sustains Oklahoma's exception, New Mexico shall still be in violation of the Compact as the 1990 Report concluded. The nature of the violation, however, would be that New Mexico has developed and maintained conservation storage capacity in reservoirs in New Mexico below Conchas Dam in excess of the limitation imposed under Article IV (b). (See, 1990 Report, p. 36).

SUMMARY OF ARGUMENT

The 1990 Report acknowledges that the literal language of Article IV (b) of the Compact, read in conjunction with the

Article II (d) definition of "conservation storage," is supportive of Oklahoma's interpretation and reading of Article IV (b) that the limitation imposed is upon the capacity of reservoirs, not quantities of water in conservation storage. Notwithstanding such acknowledgements, the Report rejects that interpretation based primarily on considerations of Compact purpose, inconsistency between that interpretation and other Compact provisions and the history of Compact negotiations. The Report additionally concludes that the Texas apportionment provision, Article V of the Compact, is clearly a water in storage limitation, and there exists no basis for concluding that the Compact negotiators intended a different type of limitation, i.e., capacity, to be imposed upon New Mexico.

The basis for Oklahoma's exception is a plain reading of Article IV (b) in conjunction with the Article II (d) definition of "conservation storage," as well as consistency between that reading, Compact purposes and the history of Compact negotiations. Oklahoma additionally states that its reading of Article IV (b) is not irreconcilably in conflict with other Compact provisions.

ARGUMENT

THE COMPACT'S ARTICLE IV(b) LIMITATION ON "CONSERVATION STORAGE" IN NEW MEXICO SHOULD BE INTERPRETED TO APPLY TO THE PHYSICAL CAPACITY OF RESERVOIRS, NOT THE QUANTITY OF WATER IN CONSERVATION STORAGE.

In the instant action, one sub-issue presented is whether the New Mexico Article IV (b) Compact limitation is a limitation on the capacity of reservoirs available for impounding and retaining conservation storage waters, or is, instead, a limitation on the quantity of conservation waters which may be actually impounded and stored.

Oklahoma has advanced the view that the Compact's

Article IV (b) limitation is a capacity limitation and New Mexico has violated that provision by having constructed and maintained conservation storage capacity below Conchas Dam in excess of 200,000 acre-feet. New Mexico has taken the position that the limitation is a limitation on the quantity of water in storage, not storage capacity, and it did not have in excess of 200,000 acre-feet of water in conservation storage below Conchas Dam.

The 1990 Report acknowledges that a literal reading of Article IV (b) in conjunction with Article II (d) of the Compact is supportive of Oklahoma's capacity reading (1990 Report, p. 36). The 1990 Report goes on, however, to reject Oklahoma's interpretation and recommend that the limitation imposed be, instead, on the quantity of waters in conservation storage. Nevertheless, the Report additionally concludes that New Mexico violated the Compact by possessing in New Mexico quantities of water in conservation storage below Conchas Dam in excess of the amount allowed under Article IV (b).

Oklahoma agrees, as the 1990 Report concludes, that New Mexico violated the Compact. Oklahoma also agrees that New Mexico impounded and maintained in conservation storage below Conchas Dam quantities of conservation storage water in excess of 200,000 acre-feet. The Report conclusion with which Oklahoma takes exception is the interpretation of Article IV (b) as establishing a waters in storage limitation and not a reservoir conservation storage capacity limitation.

The capacity issue presents a question of Compact interpretation and meaning. Oklahoma concurs with the underlying approach taken in the 1990 Report for considering and resolving this issue. Oklahoma agrees that consideration should be given to the language of the Compact, both with respect to the language of Article IV (b) and Article II (d) as well as all other Compact provisions, the underlying purposes of the Compact and the history of Compact negotiations. Oklahoma concurs with the Report position that in interpreting these provisions and resolving this issue, resort may and should

be had to extrinsic evidence to ascertain Compact meaning and determine the dispute. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951); *Arizona v. California*, 292 U.S. 341 (1934); *Texas v. New Mexico*, 462 U.S. 554 (1983). Oklahoma's exception relates solely to the conclusion reached based on a consideration of all of the factors noted in the Report.

The 1990 Report, at the outset of Section VI, page 35, correctly quotes the language of Article IV (b) and Article II (d), and correctly observes that the wording of these provisions is supportive of a capacity interpretation. The question therefore becomes whether the capacity interpretation is contradicted by, and demonstratively erroneous in light of, Compact purposes, other Compact provisions and the history of Compact negotiations.

Oklahoma agrees that two primary purposes of the Compact were and are to make secure and protect present developments within the signatory states and to provide for the construction of additional works for the conservation of the waters of the Canadian River. Oklahoma also agrees, as the 1990 Report infers, that the fundamental method chosen by the Compact negotiators for accomplishing these purposes was to limit future storage of water in New Mexico and Texas. The question presented here is whether the Article IV (b) limitation is a reservoir storage capacity limitation or a limitation on the quantity of waters actually in conservation storage. Since either limitation mechanism, *capacity or waters-in-storage*, would achieve the Compact's purpose of limiting future storage in New Mexico, Oklahoma's reading of Article IV (b) is consistent with Compact purposes. Therefore, Compact purpose cannot rationally contradict Oklahoma's interpretation.

The 1990 Report states that Article IV (b) is inconsistent with Article IV (c). The Report notes that Article IV (c) briefly specifies the conservation storage limitation on the North Canadian River in New Mexico in terms of storage of such water, and this language plainly refers to stored water and not reservoir capacity. (1990 Report, p. 37-38).

Article IV (c) of the Compact speaks to the right of New Mexico to provide "conservation storage" in the drainage basin of the North Canadian River. That right, however, is the right previously established by Article IV (b). In speaking to that right, Article IV (c) provides that the only part of the 200,000 acre-feet conservation storage capacity apportionment that can be provided in the North Canadian River Basin is specifically limited to those waters then unappropriated under the laws of New Mexico and Oklahoma.

Article IV (c) does not contradict Oklahoma's capacity interpretation of Article IV (b). Article IV (c) imposes a particular limitation which is companion and supplemental to, but nevertheless distinct from, that which is addressed and established in Article IV (b).

Having established the fundamental nature and amount of the New Mexico conservation storage apportionment within Article IV (b) as to both the Canadian and North Canadian Rivers, there would be no purpose served in re-addressing that apportionment within Article IV (c). The only purpose Article IV (c) serves is to identify and describe those waters which could be stored in the North Canadian River Basin pursuant to the conservation storage apportionment already established under Article IV (b). Accordingly, Article IV (c), addressing a distinct subject matter, is not inconsistent with Oklahoma's capacity reading of Article IV (b) and affords no basis for a contrary interpretation.

The 1990 Report additionally finds contradiction between Oklahoma's reading of Article IV (b) and Article VII of the Compact. The Report notes that Article VII authorized the Canadian River Commission ("Commission") to allow New Mexico and Texas to impound more water than amounts set forth in Articles IV and V. The Report reasoned that if Article IV (b) imposed a capacity limitation, there would never be any capacity available for New Mexico to impound surplus waters on a short-term basis with prior Commission permission, thus rendering Article VII meaningless as far as New Mexico is

concerned. (1990 Report, p. 38). This reasoning is faulty.

Article IV (b), when read in conjunction with Article II (d), as it should be, is not irreconcilable with Article VII of the Compact. New Mexico, under Article VII and with prior Commission approval, could store surplus waters in reservoir capacities exempt from the Article II (d) definition of "conservation storage." For example, capacities allocated solely to flood control or power production could be used to temporarily store such surplus waters. The 1990 Report rejects this reconciling reading, and goes further to note that Ute Reservoir has no capacity allocated to such purposes and, even if it did, such a use of available exempt storage might defeat project purposes established in the reservoir's design. (1990 Report, p. 38-39).

The Report rejection rationale is a blind alley. Oklahoma's reading of Article IV (b) should stand or fall on the basis of whether that reading is reconcilable under the Compact and its negotiating history, not on the basis of what reservoir storage capacities New Mexico, post-Compact and unilaterally, actually elected to design and construct. The fact that New Mexico subsequently designed and constructed particular reservoirs in a manner which may or may not afford them the opportunity to have exempt capacity available for a temporary impoundment and storage of surplus waters is not instructive as to the meaning of Articles IV (b) and VII, and should not be determinative in interpreting these provisions.

The 1990 Report also finds inconsistency between Oklahoma's interpretation of Article IV (b) and Article VIII of the Compact. Article VIII provides that the signatory states shall furnish to the Commission, at Commission determined intervals, accurate records of quantities of water stored in reservoirs pertinent to the administration of the Compact. The Report states that if New Mexico's limitation were a capacity limitation, the reporting of waters actually in storage would not have been required and all that would have been required to be reported was data on reservoir capacities. (1990 Report, p. 39).

The Report also concludes that since this was the only data which the Compact negotiators felt would be required to enforce Compact storage restrictions, the intended limitation must have been waters in storage and not reservoir capacity. (1990 Report, p. 44).

As in the case of Articles IV (c) and VII, supra, there is not irreconcilable inconsistency between Oklahoma's reading of Article IV (b) and Article VIII. These two provisions do not address the same subject matter. Article IV (b) establishes New Mexico's fundamental apportionment limitation. Article VIII merely speaks to a particular information reporting requirement. Article VIII states that certain records shall be furnished by the signatory states to the Commission. That requirement is not preceded by any language inferring a Compact negotiators' conclusion that such information was all that would be necessary to enforce Compact limitations.

Notably, Article VIII first appeared in the October 13, 1950, draft Compact. At that point in time, the New Mexico apportionment limitation was specifically expressed in terms of waters-in-storage. The December 5, 1950, draft of the Compact included the same reporting requirement with only a slight change in the final wording of the provision describing the reservoirs subject to the requirement. As the 1990 Report notes, the waters-in-storage limitation on New Mexico was changed to a capacity limitation in the December 5, 1950, draft of the Compact. (1990 Report, p. 41). The final limitation version of Article IV (b) did not contain language expressly keyed to stored water such as was contained in pre-December 5, 1950 versions. Any seeming inconsistency here can be explained by the timing of the eleventh-hour decision of the Compact negotiators to change the fundamental nature of the apportionment limitation imposed on New Mexico.

Contrary to the 1990 Report reasoning and conclusion, the history of Compact negotiations supports Oklahoma's capacity interpretation.

Prior to the December 5, 1950, draft of Article IV, the New Mexico limitation was a waters-in-storage limitation. In the December 5 draft, the limitation was changed to a capacity limit. That change is undeniably evidenced by inclusion of two (2) phrases in Article IV in the December 5 draft:

> (1) ". . . subject to the following *limitation upon storage capacity . . .*, and
> (2) . . . amount of conservation *storage . . . available for impounding* . . . waters . . . shall be limited to . . ." (Emphasis Added, P. Ex. 38, Ex. F. Attachment, p. 2)

In the agreed December 6 version of Article IV, the Compact negotiators, in respects relevant here, did the following. First, the introductory wording of Article IV as it appeared in the December 5 draft was revised to separately state New Mexico's entitlement to the use of waters above Conchas Dam. Given the nature of that revision, the limitation upon capacity wording which appeared in the December 5 draft would logically be deleted from the revised first paragraph. In the December 6 version, this provision became sub-paragraph (a) of Article IV.

Second, the negotiators in the December 6 draft took what was previously the entirety of Article IV, made editorial revisions to accommodate the new December 6 sub-paragraph (a) language and made the provision sub-paragraph (b) of Article IV. In rewording sub-paragraph (b) to accommodate the revised wording under sub-paragraph (a) of Article IV, the negotiators retained the language "New Mexico shall have free and unrestricted use of all waters," inserted the language following that wording "originating in the drainage basin of the Canadian River in New Mexico below Conchas Dam," inserted the phrase "provided that" and then simply picked up the balance of the previous language of Article IV (a) with the exception that the word "those" was changed to the word "these" and the phrase "of the Canadian River" was deleted.

Third, the negotiators added sub-paragraph (c) to Article IV. This additional sub-paragraph (c) merely stated that, as to the New Mexico right to provide conservation storage in the drainage basin of the North Canadian River, that right would be further limited to storing only those waters which are, at the time, unappropriated under the laws of New Mexico and Oklahoma.

From the face of the pre-December 5 Compact drafts of Article IV, the December 5 draft, and the adopted December 6 draft of that same Article, it is clear that the Compact negotiators, in arriving upon their final version of Article IV, did not change the capacity limitation established in the December 5 draft. While the final version did exclude the words "limitation upon storage capacity," that deletion was clearly for editorial purposes only. By retaining mention of conservation storage "available for impounding" waters in the final version of Article IV, the Compact negotiators clearly left intact the capacity limitation established in the December 5 draft.

The Raymond Hill memorandum supports Oklahoma's reconstruction. Hill explains the development of Article IV as follows:

> "It was recognized that New Mexico was entitled to provide a reasonable amount of *storage to impound* the flood flows of Ute Creek and other minor tributaries of the Canadian River entering the stream below Conchas Dam and above any contemplated storage works on the Canadian River in Texas. It was agreed that *a total of 200,000 acre-feet would be sufficient to provide regulation of these tributaries and leave a reasonable margin for storage of* any of the *waters of North Canadian River*

> which might be *unappropriated at the time* under the laws of New Mexico or of Oklahoma." (Emphasis Added, P. Ex. 38, p. 3).

In referring to "a total of 200,000 acre-feet" as being sufficient to provide regulation of Ute Creek flood flows and other minor tributaries of the Canadian River entering the stream below Conchas Dam *and* "leave a reasonable margin *for storage* of "unappropriated waters of the North Canadian River, Hill was clearly referring to 200,000 acre-feet of reservoir storage capacity available for future development.

An additional underlying consideration appearing throughout the 1990 Report's recommendation on the capacity issue is that there was no evidence to indicate that the Compact negotiators intended to treat the Texas and New Mexico Compact apportionments differently, that is, a capacity limit on New Mexico and a water in storage limit on Texas (See, for example, 1990 Report, p. 40-41). This observation is erroneous, and advances reasoning where none otherwise exists.

Even the most casual review of Articles IV (b) and V of the Compact demonstrate significant and obviously intentional contrast between the fundamental apportionment provisions intended to apply to New Mexico and Texas. Article V establishes an apportionment formula, the results of which are subject to contingencies and triggering events that may alter the Texas apportionment entitlement. See Compact, Article V (b). Article V (c) of the Compact provides for Oklahoma demands for Texas releases, and creates an Oklahoma interest and potential participation in conservation storage in Texas. Nothing comparable to this appears in Article IV of the Compact. Additionally, the Compact negotiators were obviously aware that Texas' Sanford project was to be located on the mainstem of the Canadian River and would be of much greater size than the conservation storage provision for Texas. This greater size would afford Texas the opportunity to capture erratic flood flows in the basin above the project. There was no

comparable understanding regarding the tributary reservoirs that New Mexico expected to some day construct.

CONCLUSION

In conclusion, Oklahoma states that its capacity interpretation of Article IV (b) is consistent with a plain reading of that provision, the purposes of the Compact and the history of Compact negotiations and is not irreconcilable with other provisions of the Compact. Oklahoma takes exception to the 1990 Report finding and conclusion to the contrary. Oklahoma requests that the Court's Opinion in this cause find and determine that the limitation imposed under Article IV (b) is a limitation on physical reservoir storage capacity in reservoirs below Conchas Dam rather than on the quantity of water in conservation storage in reservoirs. Interpreted in this manner, New Mexico remains in violation of Article IV (b) of the Compact by having not less than 245,000 acre-feet of conservation storage ("capacity") below Conchas Dam. (See, 1990 Report, p. 36). Oklahoma prays that decrees such as may be made by the Court reflect this interpretation of Article IV (b) as well as New Mexico's violation of that provision.

Respectfully submitted,

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December 20, 1990

APPENDIX A

CANADIAN RIVER COMPACT

The State of New Mexico, the State of Texas, and the State of Oklahoma, acting through their Commissioners, John H. Bliss for the State of New Mexico, E. V. Spence for the State of Texas, and Clarence Burch for the State of Oklahoma, after negotiations participated in by Berkeley Johnson, appointed by the President as the representative of the United States of America, have agreed respecting Canadian River as follows:

ARTICLE I

The major purposes of this Compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the States; and to provide for the construction of additional works for the conservation of the waters of Canadian River.

ARTICLE II

As used in this Compact:

(a) The term "Canadian River" means the tributary of Arkansas River which rises in northeastern New Mexcio and flows in an easterly direction through New Mexico, Texas and Oklahoma and includes North Canadian River and all other tributaries of said Canadian River.

(b) The term "North Canadian River" means that major tributary of Canadian River officially known as North Canadian River from its source to its junction with Canadian River and includes all tributaries of North Canadian River.

(c) The term "Commission" means the agency created by this Compact for the administration thereof.

(d) The term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and

industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

ARTICLE III

All rights to any of the waters of Canadian River which have been perfected by beneficial use are hereby recognized and affirmed.

ARTICLE IV

(a) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River above Conchas Dam.

(b) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River in New Mexico below Conchas Dam, provided that the amount of conservation storage in New Mexico available for impounding these waters which originate in the drainage basin of Canadian River below Conchas Dam shall be limited to an aggregate of two hundred thousand (200,000) acre-feet.

(c) The right of New Mexico to provide conservation storage in the drainage basin of North Canadian River shall be limited to the storage of such water as at the time may be unappropriated under the laws of New Mexico and of Oklahoma.

ARTICLE V

Texas shall have free and unrestricted use of all waters of Canadian River in Texas, subject to the limitations upon storage of water set forth below:

(a) The right of Texas to impound any of the waters of North Canadian River shall be limited to storage on tributaries of said River in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food

and feed for the householders and domestic livestock actually living or kept on the property.

(b) Until more than three hundred thousand (300,000) acre-feet of conservation storage shall be provided in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs in the drainage basin of Canadian River east of the 97th meridian, the right of Texas to retain water in conservation storage, exclusive of waters of North Canadian River, shall be limited to five hundred thousand (500,000) acre-feet; thereafter the right of Texas to impound and retain such waters in storage shall be limited to an aggregate quantity equal to two hundred thousand (200,000) acre-feet plus whatever amount of water shall be at the same time in conservation storage in reservoirs in the drainage basin of Canadian River in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs east of the 97th meridian; and for the purpose of determining the amount of water in conservation storage, the maximum quantity of water in storage following each flood or series of floods shall be used; provided, that the right of Texas to retain and use any quantity of water previously impounded shall not be reduced by any subsequent application of the provisions of this paragraph (b).

(c) Should Texas for any reason impound any amount of water greater than the aggregate quantity specified in paragraph (b) of this Article, such excess shall be retained in storage until under the provisions of said paragraph Texas shall become entitled to its use; provided, that, in event of spill from conservation storage, any such excess shall be reduced by the amount of such spill from the most easterly reservoir on Canadian River in Texas; provided further, that all such excess quantities in storage shall be reduced monthly to compensate for reservoir losses in proportion to the total amount of water in the reservoir or reservoirs in which such excess water is being held; and provided further that on demand by the Commissioner for Oklahoma the remainder of any such excess quantity of water in storage shall be released into the channel of Canadian River at the greatest rate practicable.

ARTICLE VI

Oklahoma shall have free and unrestricted use of all waters of Canadian River in Oklahoma.

ARTICLE VII

The Commission may permit New Mexico to impound more water than the amount set forth in Article IV and may permit Texas to impound more water than the amount set forth in Article V; provided, that no State shall thereby be deprived of water needed for beneficial use; provided further that each such permission shall be for a limited period not exceeding twelve (12) months; and provided further than no State or user of water within any State shall thereby acquire any right to the continued use of any such quantity of water so permitted to be impounded.

ARTICLE VIII

Each State shall furnish to the Commission at intervals designated by the Commission accurate records of the quantities of water stored in reservoirs pertinent to the administration of this Compact.

ARTICLE IX

(a) There is hereby created an interstate administrative agency to be known as the "Canadian River Commission." The Commission shall be composed of three (3) Commissioners, one (1) from each of the signatory States, designated or appointed in accordance with the laws of each such State, and if designated by the President an additional Commissioner representing the United States. The President is hereby requested to designate such a Commissioner. If so designated, the Commissioner representing the United States shall be the presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission. All members of the Commission must be present to constitute a quorum. A unanimous vote of the Commissioners for the

three (3) signatory States shall be necessary to all actions taken by the Commission.

(b) The salaries and personal expenses of each Commissioner shall be paid by the government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the three (3) States and be paid by the Commission out of a revolving fund hereby created to be known as the "Canadian River Revolving Fund." Such fund shall be initiated and maintained by equal payments of each State into the fund in such amounts as will be necessary for administration of this Compact. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Said fund shall not be subject to the audit and accounting procedures of the States. However, all receipts and disbursements of funds handled by the Commission shall be audited by a qualifed independent public accountant at regular intervals and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission may:

(1) Employ such engineering, legal, clerical, and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

(2) Enter into contracts with appropriate Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records, and for the preparation of reports;

(3) Perform all functions required of it by this Compact and do all things necessary, proper, or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies.

(d) The Commission shall:

(1) Cause to be established, maintained and operated such stream and other gaging stations and evaporation stations as may from time to time be necessary for proper admin-

istration of the Compact, independently or in cooperation with appropriate governmental agencies;

(2) Make and transmit to the Governors of the signatory States on or before the last day of March of each year, a report covering the activities of the Commission for the preceding year;

(3) Make available to the Governor of any signatory state, on his request, any information within its possession at any time, and shall always provide access to its records by the Governors of the States, or their representatives, or by authorized representatives of the United States.

ARTICLE X

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States to the Indian Tribes;

(b) Subjecting any property of the United States, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(c) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact;

(d) Applying to, or interfering with, the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this Compact;

(e) Establishing any general principle or precedent applicable to other interstate streams.

ARTICLE XI

This Compact shall become binding and obligatory when it shall have been ratified by the Legislature of each State and approved by the Congress of the United States. Notice of ratification by the Legislature of each State shall be given by the Governor of that State to the Governors of the other States and to the President of the United States. The President is hereby requested to give notice to the Governor of each State of approval by the Congress of the United States.

IN WITNESS WHEREOF, The Commissioners have executed four (4) counterparts hereof, each of which shall be and constitute an original, one (1) of which shall be deposited in the archives of the Department of State of the United States, and (1) of which shall be forwarded to the Governor of each State.

DONE at the City of Santa Fe, State of New Mexico, this 6th day of December, 1950.

/s/ John H. Bliss

John H. Bliss
Commissioner for the State of New Mexico

/s/ E. V. Spence

E. V. Spence
Commissioner for the State of Texas

/s/ Clarence Burch

Clarence Burch
Commissioner for the State of Oklahoma

APPROVED:

/s/ Berkeley Johnson

Berkeley Johnson
Representative of the United States of America